

## CCRB INVESTIGATIVE RECOMMENDATION

|   |                                     |                           |   |   |                                 |
|---|-------------------------------------|---------------------------|---|---|---------------------------------|
| Investigator:<br>Dane Buchanan                    | Team:<br>Team # 2                   | CCRB Case #:<br>201101407 | <input checked="" type="checkbox"/> Force             | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |                                     |                           | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.                 | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Saturday, 01/29/2011 12:30 AM | Location of Incident:<br>§ 87(2)(b) | Precinct:<br>75           | 18 Mo. SOL<br>7/29/2012                               | EO SOL<br>7/29/2012                           |                                 |
| Date/Time CV Reported<br>Sat, 01/29/2011 11:09 AM | CV Reported At:<br>IAB              | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Wed, 02/02/2011 8:14 AM |   |                                 |

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b)  | § 87(2)(b)   |

| Subject Officer(s)     | Shield | TaxID  | Command |
|------------------------|--------|--------|---------|
| 1. SGT Robert Martinez | 01369  | 922716 | 075 PCT |
| 2. Officers            |        |        |         |
| 3. POM David Pralgo    | 23516  | 916465 | 075 PCT |

| Witness Officer(s)   | Shield No | Tax No | Cmd Name |
|----------------------|-----------|--------|----------|
| 1. POM Gregg Minardi | 04986     | 940475 | 075 PCT  |

| Officer(s)            | Allegation  | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.SGT Robert Martinez | Abuse: Sergeant Robert Martinez supervised the stop of § 87(2)(b) and § 87(2)(b)            | § 87(2)(b)                  |
| B.SGT Robert Martinez | Abuse: Sergeant Robert Martinez frisked § 87(2)(b)  | § 87(2)(b)                  |
| C.SGT Robert Martinez | Abuse: Sergeant Robert Martinez searched § 87(2)(b)   | § 87(2)(b)                  |
| D.POM David Pralgo    | Abuse: PO David Pralgo searched § 87(2)(b)  | § 87(2)(b)                  |
| E.SGT Robert Martinez | Discourtesy: Sergeant Robert Martinez spoke rudely to § 87(2)(b)                            | § 87(2)(b)                  |
| F.SGT Robert Martinez | Abuse: Sergeant Robert Martinez refused to provide his name and shield number to § 87(2)(b) | § 87(2)(b)                  |
| G.SGT Robert Martinez | Force: Sergeant Robert Martinez used physical force against § 87(2)(b)                      | § 87(2)(b)                  |
| H.POM David Pralgo    | Discourtesy: PO David Pralgo acted rudely toward § 87(2)(b)                                 | § 87(2)(b)                  |
| I.SGT Robert Martinez | Abuse: Sergeant Robert Martinez threatened to arrest § 87(2)(b)                             | § 87(2)(b)                  |
| J. Officers           | Abuse: Officers threatened to arrest § 87(2)(b)   | § 87(2)(b)                  |
| § 87(4-b) § 87(2)(g)  | § 87(2)(b)  | § 87(2)(b)                  |
| § 87(4-b) § 87(2)(g)  | § 87(2)(b)  | § 87(2)(b)                  |
| § 87(4-b) § 87(2)(g)  | § 87(2)(b)  | § 87(2)(b)                  |

### Case Summary

On January 29, 2011, § 87(2)(b) called the Internal Affairs Bureau to file the following complaint (encl. 5A – 5B). This complaint was received by the CCRB on February 2, 2011 under IAB log 11-04295 (encl. 6A – 6B).

On January 29, 2011 at approximately 12:30 a.m., § 87(2)(b) and § 87(2)(b) were stopped by Sergeant Robert Martinez, PO David Pralgo and PO Gregg Minardi of the 75<sup>th</sup> Precinct in front of § 87(2)(b) in Brooklyn. The following allegations resulted:

- **Allegation A – Abuse of Authority: Sergeant Robert Martinez supervised the stop of** § 87(2)(b) **and** § 87(2)(b) § 87(2)(g)
- **Allegation B – Abuse of Authority: Sergeant Robert Martinez frisked** § 87(2)(b) § 87(2)(g)
- **Allegation C – Abuse of Authority: Sergeant Robert Martinez searched** § 87(2)(b) § 87(2)(g)
- **Allegation D – Abuse of Authority: PO David Pralgo searched** § 87(2)(b) § 87(2)(g)
- **Allegation E – Discourtesy: Sergeant Robert Martinez spoke rudely to** § 87(2)(b) § 87(2)(g)
- **Allegation F – Abuse of Authority: Sergeant Robert Martinez refused to provide his name and shield number to** § 87(2)(b) § 87(2)(g)
- **Allegation G – Force: Sergeant Robert Martinez used physical force against** § 87(2)(b) § 87(2)(g)
- **Allegation H – Discourtesy: PO David Pralgo acted rudely toward** § 87(2)(b) § 87(2)(g)
- **Allegation I – Abuse of Authority: Sergeant Robert Martinez threatened to arrest** § 87(2)(b) § 87(2)(g)
- **Allegation J – Abuse of Authority: Officers threatened to arrest** § 87(2)(b) § 87(2)(g)

- § 87(4-b) § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### Results of Investigation

#### Civilian Statement(s)

##### Complainant/Victim: § 87(2)(b)

§ 87(2)(b) is a Hispanic male who was § 87(2)(b) old at the time of the incident. He is 5'7" tall, weighs 175 pounds and has black hair and brown eyes. § 87(2)(b)  
[REDACTED]

#### IAB Testimony

§ 87(2)(b) provided a telephone statement to IAB when he filed his complaint with them on January 29, 2011 (encl. 5A – 5B). § 87(2)(g)  
[REDACTED]

#### CCRB Testimony

§ 87(2)(b) provided a telephone statement to the CCRB on February 8, 2011 (encl. 7A). He was interviewed at the CCRB on February 11, 2011 (encl. 7B – 7F). § 87(2)(g)  
[REDACTED]

On January 29, 2011 at approximately 12:30 a.m., § 87(2)(b) and § 87(2)(b) were on their way to visit § 87(2)(b) a cousin of § 87(2)(b) at his apartment at § 87(2)(b) in Brooklyn. As they walked to § 87(2)(b)'s apartment they noticed a marked RMP parked across the street from his house and a marked RMP and an unmarked blue SUV parked a couple houses away. § 87(2)(b) and § 87(2)(b) walked through the gate to the top of the stoop of § 87(2)(b) and called § 87(2)(b) to let them in. § 87(2)(b) was inside with a female and took his time to answer the door so § 87(2)(b) and § 87(2)(b) waited at the top of the stoop while talking to each other. Shortly afterwards the SUV circled the block four times, double-parked in front of the building and three officers exited the vehicle and approached them. The driver of the SUV was identified from his badge number that § 87(2)(b) provided as Sergeant Robert Martinez of the 75<sup>th</sup> Precinct. The other officers were identified through investigation as PO David Pralgo and PO Gregg Minardi of the 75<sup>th</sup> Precinct.

The officers asked § 87(2)(b) and § 87(2)(b) what they were doing at the location and Sergeant Martinez asked them to come down from the stoop. They told the officers they were waiting for their friend and § 87(2)(b) objected to coming down from the stoop, telling the officers that it was private property and that they had the right not to come down. § 87(2)(b) put his hands up and came down from the stoop without complaining. Sergeant Martinez immediately frisked and searched § 87(2)(b) while PO Pralgo searched § 87(2)(b). Sergeant Martinez told § 87(2)(b) “We are all gonna do this nice and easy, nobody wants to see their fucking face in the snow tonight.” Sergeant Martinez repeatedly asked what they were doing there and § 87(2)(b) who was getting aggravated and vocal, told Sergeant Martinez that he had already told him and that he did not need to keep repeating himself.

After Sergeant Martinez searched § 87(2)(b) he started to walk back to his vehicle and § 87(2)(b) asked for his name and badge number. Sergeant Martinez charged at § 87(2)(b) saying, “Are you fucking kidding me? Who the fuck do you think you are?” Sergeant Martinez shoved § 87(2)(b) with his elbow, causing § 87(2)(b) to stumble a few steps. § 87(2)(b) put his hands up and said that he was going to reach for his wallet to show him some ID. § 87(2)(b) pulled out his military ID and Sergeant Martinez grabbed it and put it in his pocket, telling § 87(2)(b) that he did not have any ID. Sergeant Martinez gave § 87(2)(b) s wallet to PO Pralgo, who threw it into the street. § 87(2)(b) did not make these allegations regarding his ID and wallet during his statement to IAB. § 87(2)(b) came out of the building and asked § 87(2)(b) and § 87(2)(b) what was going on. § 87(2)(b) did not interact with the officers but stayed outside for the duration of the incident.

Sergeant Martinez handcuffed § 87(2)(b) and repeatedly told him, “That’s it, you’re going in.” § 87(2)(b) told the officers that § 87(2)(b) was in § 87(2)(b) and Sergeant Martinez said, “Really, and you’re out here doing this shit?” § 87(2)(b) asked what he was doing wrong and Sergeant Martinez began lecturing § 87(2)(b). Sergeant Martinez told PO Pralgo to get § 87(2)(b) s wallet and they gave § 87(2)(b) s state ID to PO Minardi. Sergeant Martinez told § 87(2)(b) that it did not matter if he made a complaint about him because they would not do anything to him and he told § 87(2)(b) “Go ahead, report me.” PO Minardi came back with § 87(2)(b) s ID, told Sergeant Martinez that he was clean, and he was let go and the officers left.

**Victim:** § 87(2)(b)

*He is a Hispanic male.*

### **CCRB testimony**

§ 87(2)(b) provided a telephone statement to the CCRB on February 17, 2011 (encl. 8). On February 17, 2011, § 87(2)(b) scheduled an interview for February 24, 2011. § 87(2)(b) was called by the CCRB on February 23, 2011 and he indicated that he would not be able to come in on February 24, 2011 and indicated that he would call back to reschedule on February 28, 2011 when he got his work schedule. Voicemails were left for § 87(2)(b) on March 1, 2011, March 3, 2011 and March 7, 2011. Letters could not be sent to him because his address remains unknown. To date, § 87(2)(b) has not responded to these attempts to schedule an interview.

On January 29, 2011 at approximately 12:30 a.m., § 87(2)(b) and § 87(2)(b) went to § 87(2)(b) s apartment at § 87(2)(b) in Brooklyn. When they arrived § 87(2)(b) was inside with a female and § 87(2)(b) and § 87(2)(b) waited outside on the stoop. While on the stoop they noticed several people in an unmarked vehicle with tinted windows staring at them. The vehicle circled the block three or four times, parked in front of the

building and then Sergeant Robert Martinez, PO David Pralgo and PO Gregg Minardi exited the vehicle and approached them.

The officers asked them what they were doing and § 87(2)(b) told them that they were waiting for his cousin to open the door. Sergeant Martinez asked them again what they were doing there and § 87(2)(b) said that he had told him already and reiterated that he was waiting for his cousin. Sergeant Martinez told them to come down from the stoop and § 87(2)(b) asked him why. § 87(2)(b) was then grabbed and pulled onto the sidewalk where he was searched. § 87(2)(b) was also searched.

The officers asked why they did not come down the stairs immediately and § 87(2)(b) told them because they had already told them why they were there and that he did not know what their problem was. The officers began to walk away and § 87(2)(b) politely asked for Sergeant Martinez's badge number. Sergeant Martinez came back to § 87(2)(b) pushed him to the ground with both hands and told him, "You want my badge number? There's my badge number. What are you gonna do about it?" He then placed § 87(2)(b) in handcuffs and took him to the side where he spoke to him privately. § 87(2)(b) was placed against the wall with his hands behind his back but he was not handcuffed. The officers told him to stand there or else they would arrest him and that if his friend did not shut up he would be arrested. § 87(2)(b) asked them what they had been doing wrong and he was told to shut up. § 87(2)(b) finally came out of the house and one of the officers told him that his friend had a slick mouth. § 87(2)(b) replied that they were not being slick if they were just asking questions about what was going on. When Sergeant Martinez finally let § 87(2)(b) go he told him not to think he could get him in trouble.

**Witness:** § 87(2)(b)

### **CCRB Testimony**

§ 87(2)(b) provided a telephone statement on February 28, 2011 (encl. 9). On February 28, 2011, § 87(2)(b) scheduled an interview for March 7, 2011. § 87(2)(b) did not appear for this interview and did not call previously to cancel or reschedule. A missed appointment letter was sent to § 87(2)(b) on March 7, 2011. This letter has not been returned by the United States Postal Service. Voicemails were left for § 87(2)(b) on March 9, 2011 and March 11, 2011. To date, § 87(2)(b) has not responded to these attempts to reschedule his missed appointment.

On January 29, 2011 at approximately 12:30 a.m., § 87(2)(b) was at his house at § 87(2)(b) waiting for § 87(2)(b) and § 87(2)(b) to come over. When they arrived he was not able to open the door for them and they had to wait outside. When § 87(2)(b) finally opened the door he saw Sergeant Robert Martinez, PO David Pralgo and PO Gregg Minardi walking away from § 87(2)(b) and § 87(2)(b) and towards their car. § 87(2)(b) thought that the officers must have thought he had said something because they soon came walking back and asked § 87(2)(b) and § 87(2)(b) to come off the steps. They told the officers that they did not want to and Sergeant Martinez got angry.

When § 87(2)(b) finally went down the steps he asked Sergeant Martinez for his name and badge number so he could file a complaint. Sergeant Martinez charged at § 87(2)(b) and pushed him, threw him against the wall and threatened to lock him up. Sergeant Martinez was saying a lot of things to § 87(2)(b) but § 87(2)(b) could not hear what was being said. § 87(2)(b) was more upset and was trying to argue the situation, telling the officers that they were allowed to ask for information. § 87(2)(b) was trying to calm him down because the officers also threatened to arrest § 87(2)(b). PO Minardi came up to § 87(2)(b) and told him to just

let his partner speak to them and hopefully they would let them go. After Sergeant Martinez spoke to § 87(2)(b) for about ten minutes the officers let him and § 87(2)(b) go.

**NYPD Statement(s):**

**Subject Officer: SERGEANT ROBERT MARTINEZ**

- *He is a Hispanic male who was § 87(2)(b) old at the time of the incident. He is 6'1" tall, weighs 215 pounds, is bald and has brown eyes.*
- *He is assigned to the 75<sup>th</sup> Precinct. He worked, in plainclothes, from 9:56 p.m. on January 28, 2011 until 6:40 a.m. on January 29, 2011. He was assigned as the anti-crime supervisor and worked in vehicle § 87(2)(b) an unmarked blue SUV.*

**Memo Book**

Sergeant Martinez had no memo book entries (encl. 10A – 10B) regarding the incident.

**CCRB Testimony**

Sergeant Martinez was initially interviewed at the CCRB on March 31, 2011 (encl. 10C – 10D). During this interview he could not recall the incident. After the undersigned investigator received the Stop, Question and Frisk Report for § 87(2)(b) Sergeant Martinez was re-interviewed at the CCRB on April 14, 2011 (encl. 10E – 10F).

After reviewing the stop and frisk report Sergeant Martinez was able to recall the incident. On January 29, 2011 at approximately 12:30 a.m., Sergeant Martinez received a radio run for a large dispute at a party. Sergeant Martinez, PO Minardi and PO Pralgo went to the location to see what was going on and saw some people outside, although he could not recall how many. The people seemed to be intoxicated and were talking really loud. Sergeant Martinez could not tell if they were arguing or not and the door to the house closed and he did not know if the people outside were fighting or arguing with the people inside the house.

The officers got out of the car and while walking to them Sergeant Martinez saw that one of the people, identified through investigation as § 87(2)(b) had baggie pants and kept pulling his pants up. The officers asked them about the 911 call, if there was a fight, if they lived there and what they were doing there. The people told them that it was their friend's house. § 87(2)(b) was upset, appeared intoxicated and did not seem happy. Sergeant Martinez thought he was intoxicated because he smelled of alcohol, seemed to be unsteady on his feet and was combative and agitated from the moment the officers walked up to them. Sergeant Martinez indicated that they seemed upset by the officer's presence and that he was not sure if it was because they were drunk, because they did not like police or because they just did not want to be stopped. The people were not being disrespectful and although § 87(2)(b) was upset he was cooperative. Sergeant Martinez frisked § 87(2)(b)'s waist area for his safety because he felt uncomfortable. He felt uncomfortable because § 87(2)(b) kept pulling up his pants and Sergeant Martinez did not know if he was doing so because they were baggie or because he had a weapon. Sergeant Martinez did not search him and he did not recall any other individuals being frisked.

Sergeant Martinez never used any profanity during the incident. None of them ever asked for his name and badge number. § 87(2)(b) gave Sergeant Martinez his ID and then Sergeant Martinez gave it to PO Minardi to do the stop and frisk report. Sergeant Martinez did not take the ID and place it in his pocket and tell § 87(2)(b) that he did not have an ID. None of the officers threw § 87(2)(b)'s wallet into the street and he was never threatened with arrest

or placed in handcuffs. He did not push § 87(2)(b) § 87(2)(b) never indicated that he was going to file a complaint.

**Subject Officer: PO DAVID PRALGO**

- *He is a white male who was § 87(2)(b) old at the time of the incident. He is 5'11" tall, weighs 240 pounds and has brown and gray hair and has brown eyes.*
- *He is assigned to the 75<sup>th</sup> Precinct. He worked, in plainclothes, from 10:00 p.m. on January 28, 2011 until 6:35 a.m. on January 29, 2011. He was assigned to anti-crime and worked with Sergeant Martinez and PO Minardi in an unmarked vehicle.*

**Memo Book**

PO Pralgo had no memo book entries (encl. 11A – 11B) regarding the incident.

**CCRB Testimony**

PO David Pralgo was interviewed at the CCRB on April 8, 2011 (encl. 11C – 11D). On January 29, 2011 at approximately 12:30 a.m., PO Pralgo, Sergeant Martinez and PO Minardi received a radio run of a large fight or disorderly group outside of § 87(2)(b). They did not respond directly but since they were in the area they drove by and they saw two males, identified through investigation as § 87(2)(b) and § 87(2)(b) talking on the stoop of § 87(2)(b). When asked if he suspected them of a crime at that point, PO Pralgo indicated that because of the radio run they just wanted to make sure there was no fight and to see if in fact they lived there. Sergeant Martinez decided to stop them and they exited the vehicle.

Sergeant Martinez mostly spoke to the individuals, although PO Pralgo could not really recall much of what was said. Sergeant Martinez asked them what they were doing there but § 87(2)(b) was acting rudely towards Sergeant Martinez and asked why they were stopping them. Sergeant Martinez tried to explain why but § 87(2)(b) was not happy with the explanation. PO Pralgo indicated that he thought § 87(2)(b) was intoxicated because he was very upset that he was being stopped and questioned. § 87(2)(b) was just standing off to the side and was not really doing anything. When Sergeant Martinez asked for his ID, § 87(2)(b) at first refused but eventually gave it to him. PO Pralgo indicated that at first § 87(2)(b) was uncooperative but eventually he became cooperative with the officers. Once § 87(2)(b) gave his ID to Sergeant Martinez, Sergeant Martinez handed it to PO Minardi, who wrote § 87(2)(b)'s name down. PO Pralgo indicated that § 87(2)(b) never made him fear for his safety and PO Pralgo never suspected that § 87(2)(b) had weapons on him. A male, identified through investigation as § 87(2)(b) eventually came out of § 87(2)(b) and verified that § 87(2)(b) and § 87(2)(b) were waiting for him. Sergeant Martinez continued to explain to § 87(2)(b) why he was stopped and then the situation ended.

PO Pralgo could not recall if either individual was frisked. He never heard Sergeant Martinez use any profanity and reiterated that he did not hear much of what he said. He did not recall if § 87(2)(b) asked for Sergeant Martinez's name and badge number. § 87(2)(b) was never placed in handcuffs or threatened with arrest. He did not know if Sergeant Martinez put § 87(2)(b)'s ID in his own pocket and told him that he did not have any ID. § 87(2)(b)'s wallet was never thrown into the street.

**Subject Officer: PO GREGG MINARDI**

- *He is a white male who was § 87(2)(b) old at the time of the incident. He is 5'7" tall, weighs 175 pounds and has black hair and brown eyes.*

- *He is assigned to the 75<sup>th</sup> Precinct. He worked, in plainclothes, from 10:00 p.m. on January 28, 2011 until 6:35 a.m. on January 29, 2011. He was assigned to anti-crime and worked with Sergeant Martinez and PO Pralgo in an unmarked vehicle.*

### **Memo Book**

PO Minardi's memo book entries (encl. 12A – 12C) regarding the incident are summarized as follows: On January 28, 2011 at 11:55 p.m., 1 male was stopped at the corner of § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b), § 87(2)(b) § 87(2)(b); 5'8", 170 pounds, 93Q x1 CPW.

### **Stop, Question and Frisk Report**

The stop, question and frisk report for § 87(2)(b) (encl. 12D) indicated that he was stopped for suspicion of criminal possession of a weapon after 1 minute of observation. Circumstances that led to the stop were § 87(2)(b)'s furtive movements and because the area has a high incidence of the reported offense. Hands were used on § 87(2)(b) and he was frisked because of furtive movements. § 87(2)(b)'s demeanor during the stop was calm.

### **CCRB Testimony**

PO Gregg Minardi was interviewed at the CCRB on April 8, 2011 (encl. 12E – 12F). On January 29, 2011 at approximately 12:30 a.m., PO Minardi, PO Pralgo and Sergeant Martinez responded to a radio run somewhere on § 87(2)(b) north of § 87(2)(b) regarding a fight or a dispute. PO Minardi did not recall if any other details were provided but thought that it had mentioned a weapon being involved. While traveling southbound on § 87(2)(b) they saw two males, identified through investigation as § 87(2)(b) and § 87(2)(b) standing on the stoop of a building just before § 87(2)(b) § 87(2)(b) and § 87(2)(b) were standing on the stoop talking and gesturing. PO Minardi indicated that from the car they could not tell if they were arguing or just talking and Sergeant Martinez decided to stop them.

The officers approached and asked them to come down from the stoop. At this point they wanted to make sure that they were not involved in the incident and that they belonged at that location. § 87(2)(b) and § 87(2)(b) were agitated from the beginning and were initially non-compliant and combative. They did not want to come down from the stoop and did not understand why they were being questioned. Eventually § 87(2)(b) and § 87(2)(b) came down from the stoop but were still agitated. The officers asked for their IDs right away. When PO Minardi was asked what crime they suspected them of at that point, he indicated that they suspected that they could have been involved in the dispute or fight that had been going on because they were in the same location. When he was asked if there was anything specifically about their behavior that led him to suspect them of a crime, he indicated that, other than being agitated, no.

§ 87(2)(b) and § 87(2)(b) told the officers that they were on the stoop because they were waiting for someone. The officers asked if they could call the person or have him come outside but they did not want to assist them with that. § 87(2)(b) seemed very angry and although he did not raise his voice at the officers, he had an aggravated tone and kept on asking why he was being stopped and saying that there was no reason to stop them. § 87(2)(b) was also agitated but not on the level of § 87(2)(b). Sergeant Martinez pulled § 87(2)(b) aside and tried to explain to him why he was being stopped. PO Minardi could not hear what was said between them. A male, identified through investigation as § 87(2)(b) came out of the building and PO Minardi explained to him what was going on. § 87(2)(b) indicated that § 87(2)(b)



§ 87(2)(b) and § 87(2)(b) were there for him and he apologized to the officers, telling them that they had been drinking earlier in the night.

PO Minardi could not recall if § 87(2)(b) or § 87(2)(b) were frisked. When asked why he indicated in the stop, question and frisk report that he had suspected § 87(2)(b) was in possession of a weapon, PO Minardi indicated that it was because the radio run had mentioned a weapon. When PO Minardi was asked if there was anything in particular about § 87(2)(b) that led him to suspect that he had a weapon, PO Minardi indicated that since § 87(2)(b) did not want to give his ID and kept on pulling back from the conversation, along with other normal furtive movements, he thought that there was a reason for it and he may have had something on him. PO Minardi indicated that at no point did § 87(2)(b) make him fear for his safety.

PO Minardi never heard Sergeant Martinez use profanity. He did not hear § 87(2)(b) ask for Sergeant Martinez's name or badge number. PO Minardi did not see Sergeant Martinez push § 87(2)(b) and he indicated that the only time PO Minardi got close to § 87(2)(b) was when Sergeant Martinez gave him § 87(2)(b)'s military ID. He did not see any officer throw § 87(2)(b)'s wallet into the street. PO Minardi did not know if § 87(2)(b) was placed in handcuffs and he did not hear Sergeant Martinez tell him that he was going to be arrested. He did not hear § 87(2)(b) indicate that he was going to file a complaint.

### **NYPD Document(s)**

#### **SPRINT** § 87(2)(b)

During the 911 call that generated SPRINT § 87(2)(b) (§ 87(2)(b) 13A – 13B), which was made at 12:12 a.m., § 87(2)(b) indicated that there was a large party in apartment § 87(2)(b) of § 87(2)(b). There was a lot of loud music and noise and adults and kids were drinking and smoking.

At 12:26am, Central dispatcher assigned 75th Precinct sector G to a large party at § 87(2)(b) apartment § 87(2)(b). Shortly afterwards, 75th Precinct sector A indicated that they would handle the job and the 75th Precinct sector E unit indicated that they would provide back-up. At 12:37am, the 75<sup>th</sup> Precinct sector A unit requested a call back. A call to the complainant was attempted but there was no answer. The final disposition for the call was non-crime corrected, which was made at 12:38 a.m.

### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of April 18, 2011 with regard to the incident (encl. 16H).

### **Civilian(s) Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian(s) CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 4).

### **Subject Officer(s) CCRB History**

- Sergeant Martinez has been a member of the service for twelve years and there are three substantiated CCRB allegations against him (encl. 3A – 3C).
  - In CCRB case 200205713, an allegation of discourtesy was substantiated by the Board while an allegation of force was exonerated and allegations of force, threat

- of arrest, discourtesy word and discourtesy action were unsubstantiated. The NYPD gave Sergeant Martinez a command A discipline.
  - In CCRB case 200704280, allegations of force and threat of force were substantiated by the Board while allegations of question were exonerated. The NYPD took no disciplinary action.
- PO Pralgo has been a member of the service for fifteen years and there is one substantiated CCRB allegation against him (encl. 3D – 3F).
  - In CCRB case 200905114, an allegation of force was substantiated while allegations of refusal to provide name and shield number, discourtesy and offensive language were unsubstantiated. The NYPD took no disciplinary action.

## Conclusion

### Identification of Subject Officer(s)

- Sergeant Martinez acknowledged interacting with § 87(2)(b)
- PO Pralgo acknowledged interacting with § 87(2)(b)

### Investigative Findings and Recommendations

#### Allegations Not Pled

§ 87(2)(g)

#### Allegation A – Abuse of Authority: Sergeant Robert Martinez supervised the stop of § 87(2)(b) and § 87(2)(b)

The officers admitted to stopping § 87(2)(b) and § 87(2)(b) and PO Minardi filed a stop, question and frisk report regarding the stop of § 87(2)(b). The officers indicated that they went to the area due to a radio run regarding a large dispute or fight and that they stopped § 87(2)(b) and § 87(2)(b) in regard to that radio run. PO Pralgo also noted that they received a radio run of a large fight or disorderly group but that the officers did not respond directly. However, the radio run that the officers referenced was actually for a noise complaint made at 12:12 a.m. about a party at § 87(2)(b) and not about a dispute or fight.

Police may stop an individual if the officer has a reasonable suspicion that the person has committed, is committing or is about to commit a crime. Innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand. *People v. Debour*, 40 NY2D 210, pg. 5 (1976) (encl. 2A – 2M). In addition, reasonable suspicion may not be based on a vague or unparticularized hunch, nor will innocuous or unequivocal behavior generate a founded suspicion of criminality. *People v. Moore*, 176 A.D.2d 297 (1991) (encl. 2O – 2P).

Sergeant Martinez, PO Pralgo and PO Minardi indicated that when they saw § 87(2)(b) and § 87(2)(b) they were talking to each other on the stoop of a building. Sergeant Martinez indicated that he thought there was an argument occurring, although PO Minardi indicated that the officers could not tell from the vehicle if § 87(2)(b) and § 87(2)(b) were just speaking to each other or were arguing. Sergeant Martinez also indicated that as he approached, he noticed that § 87(2)(b) was pulling up his pants. Sergeant Martinez, who alone noticed this action, asserted that this could have meant § 87(2)(b) had a weapon. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Abuse of Authority: Sergeant Robert Martinez frisked** § 87(2)(b)

Sergeant Martinez admitted to frisking § 87(2)(b) and indicated that he did so because § 87(2)(b) made him feel uncomfortable because he was pulling up his baggie pants and was agitated about being stopped.

An officer may conduct a frisk only if he “reasonably suspected that he was in danger of personal injury.” A frisk of a civilian is not justified when an officer has not witnessed criminal activity, has not received a radio run regarding an armed individual, has seen no bulges resembling a weapon or when the civilian has made no furtive movements, has not acted in a threatening manner and has not attempted to flee. People v. Brown, 613 NYS2d 70 (1994; Fourth Department) (encl. 2N). A frisk is to be conducted when an officer reasonably suspects that himself or others are in danger of physical injury. Patrol Guide 212-11 (encl. 1C – 1F).

§ 87(2)(g)

**Allegation C – Abuse of Authority: Sergeant Robert Martinez searched** § 87(2)(b)

**Allegation E – Discourtesy: Sergeant Robert Martinez spoke rudely to** § 87(2)(b)

**Allegation F – Abuse of Authority: Sergeant Robert Martinez refused to provide his name and shield number to** § 87(2)(b)

**Allegation G – Force: Sergeant Robert Martinez used physical force against** § 87(2)(b)

**Allegation H – Discourtesy: PO David Pralgo acted rudely toward** § 87(2)(b)

**Allegation I – Abuse of Authority: Sergeant Robert Martinez threatened to arrest** § 87(2)(b)

§ 87(2)(b) indicated that Sergeant Martinez searched his pockets and also alleged that Sergeant Martinez used various curses against him and that he pushed him after he requested his name and badge number. § 87(2)(b) also alleged that Sergeant Martinez pocketed his ID and told him he did not have one before handcuffing him and that PO Pralgo threw his wallet into the street. Additionally, § 87(2)(b) alleged that he was threatened with arrest. § 87(2)(b) and § 87(2)(b) provided brief telephone statements that corroborated § 87(2)(b)'s allegations of force, refusal to provide name and shield number and threat of arrest. § 87(2)(b)'s and § 87(2)(b)'s telephone statements did not corroborate § 87(2)(b)'s allegations of discourteous language or actions. Sergeant Martinez and the other officers either denied that these allegations occurred or could not recall whether they occurred. § 87(2)(g)

§ 87(2)(g)

**Allegation D – Abuse of Authority: PO David Pralgo searched § 87(2)(b)**

**Allegation J – Abuse of Authority: Officers threatened to arrest** § 87(2)(b)

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

[illegible]

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Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Supervisor: \_\_\_\_\_  
 Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
 Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date